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BY OVERNIGHT MAIL

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 96-187

Dear Mr. Caton:

DOCKET FILE COPY ORIGINAL

Enclosed for filing please find an original plus eighteen (18) copies (two of which are marked "Extra Public Copy") of the Comments of Frontier Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

Michael J. Shortley, III

cc: International Transcription Service

Mr. Jerry McKoy,
Common Carrier Bureau

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Implementation of Section 402(b)(1)(A))	CC Docket No. 96-187
of the Telecommunications Act of 1996)	

**COMMENTS OF
FRONTIER CORPORATION**

Frontier Corporation ("Frontier") submits these comments in response to the Commission's Notice initiating this proceeding.¹ In this proceeding, the Commission seeks comment on how to implement section 402(b)(1)(A) of the Telecommunications Act of 1996 ("1996 Act"). This section permits exchange carriers to file certain types of tariffs on either seven or fifteen days' notice, depending upon circumstances, and further provides that such tariff filings "shall be deemed lawful."² Although the 1996 Act permits the filing of tariffs on a streamlined basis, it does not alter the Commission's fundamental responsibility to ensure that exchange carriers' rates, terms and conditions are just, reasonable and non-discriminatory.³ The 1996 Act's amendment effectively requires the Commission to balance the benefits to exchange carriers from the

¹ *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Dkt. 96-187, Notice of Proposed Rulemaking, FCC 96-367 (Sept. 6, 1996) ("Notice").

² 1996 Act, § 402(b)(1)(A), *codified at* 47 U.S.C. § 204(a)(3).

³ See 47 U.S.C. §§ 201(b), 202(a).

availability of streamlined tariff filing procedures against the possible havoc that the likely abuse of such procedures could wreak upon their interstate access customers. To achieve this balance, the Commission should construe this provision of the 1996 Act as narrowly as possible and preserve the Commission's ability to afford full relief to interstate access customers damaged by tariffs later found to be unjust, unreasonable or discriminatory. The Commission should also signal its intent to sanction exchange carriers that abuse the process. Frontier's suggestions are set forth below.

First, the "deemed lawful" language should be treated only as a presumption that may be overcome in a subsequent investigation or complaint proceeding.⁴ Under this interpretation, the Commission retains the flexibility to award damages for any period that a tariff later found to be unlawful has been in effect. Congress did not intend entirely to preclude the Commission's oversight responsibilities by shortening the tariff filing periods nor to limit a customer's remedies should abuse occur.

Any other interpretation would permit exchange carriers to file tariffs that are blatantly unlawful, subject only to a later finding of unlawfulness that would afford prospective relief only.⁵ For example, an exchange carrier subject to price cap regulation could file out-of-band or above-cap rate changes that would be

⁴ See Notice, ¶12.

⁵ See *Arizona Grocery Co. v. Atchison T. & S.F. Ry. Co.*, 284 U.S. 370 (1932).

subject to no (or minimal) pre-effectiveness review.⁶ Such rate changes could have drastic consequences on customers and competitors alike.⁷ If the Commission interprets the “deemed lawful” language as equivalent to a finding of lawfulness, it may confidently expect that certain exchange carriers will engage in precisely such tactics. The number of exchange carrier tariff filings that the Commission has rejected, suspended and investigated or partially rejected demonstrates that this possibility is far from merely imaginary.⁸

Second, the Commission should decline to adopt its tentative conclusion that the streamlined tariff filing procedures apply to virtually all types of tariff filings.⁹ Rather, it should limit streamlined tariff filings by exchange carriers to those that only propose increases or decreases in rates. Although section 402(b)(1)(A) of the 1996 Act speaks in terms of a “new or revised charge, classification, regulation or practice,” it also makes clear that streamlined

⁶ As described in more detail, *infra*, the Commission should rely primarily on post-effectiveness review. In these circumstances, it is critical that the Commission retain the ability to award full relief.

⁷ Interstate access customers could easily be harmed by precipitous increases in interstate access rates. Competitors could also be harmed by strategic rate increases or decreases for selective rate elements that ultimately prove to be unjustified.

⁸ In contrast to the numerous exchange carrier tariff filings that have been rejected or suspended and investigated, the Commission has only deemed it necessary *once* to reject a tariff filing of a non-dominant carrier. See *Capital Network Systems, Inc., Tariff FCC No. 2, Trans. No. 1*, Memorandum Opinion and Order, 7 FCC Rcd. 8092 (1992). This difference strongly suggests that the Commission must retain the authority to compensate fully parties aggrieved by unlawful exchange carrier tariff filings.

⁹ See Notice, ¶17.

procedures apply only to filings that "shall be effective [in] 7 days (*in the case of a reduction in rates*) or 15 days (*in the case of an increase in rates*)."¹⁰

Limiting streamlined tariff processing to rate changes is necessary to prevent exchange carriers from imposing tariff changes that are not rate-affecting, but that could have disastrous consequences on interstate customers. For example, if the Commission were to permit any exchange carrier tariff filing to become effective on a streamlined basis, US West's tariff that would have eliminated the availability of interstate special access services for use in conjunction with resold Centrex service would have become effective essentially prior to any meaningful review thereof. Under the current regime, the Commission's Common Carrier Bureau rejected the proposed filing.¹¹ Had such filing become effective -- even if later rescinded -- the damage to Frontier's subsidiary, Enhanced Telemanagement, Inc. would have been incalculable.

The Commission cannot reasonably permit such a circumstance to occur. Accordingly, the Commission should permit exchange carriers to file tariffs on a streamlined basis only to the extent that they only propose increases or decreases in rates.

Third, the Commission should adopt the procedures that it proposes to address annual access tariff filings.¹² Specifically, the Commission should

¹⁰ 47 U.S.C. § 204(a)(3) (emphasis added).

¹¹ *US West, Tariffs FCC Nos. 3 and 5, Trans. No. 629, Order 10 FCC Rcd. 13708 (Com. Car. Bur. 1995), application for review pending.*

¹² See Notice, ¶ 31.

require exchange carriers to file the required supporting documentation -- including tariff review plans, other supporting documentation and rates that they intend to propose -- according to current schedules and permit interested parties to comment on these filings under the time frames that currently govern petitions to reject or suspend annual access tariff filings. The Commission should then issue an order indicating what tariff filings it would not reject or suspend and investigate. Any tariffs that exchange carriers file on streamlined notice should automatically be rejected if they fail to comply with the Commission's order, or be automatically suspended and investigated under circumstances that the Commission has indicated in its pre-filing order that would warrant this result.

The annual access tariff filings represent literally hundreds of billions of dollars. Even post-effectiveness review would not suffice to correct the enormous harm that could be inflicted upon interstate access customers from annual filings that are ultimately rejected or suspended. That the Commission has either suspended or investigated some tariff transmittals in every annual access tariff filing cycle demonstrates that this is a very real concern.

Fourth, except for the annual access tariff filings, the Commission should rely primarily on post-effectiveness review of tariff filings subject to streamlined processing.¹³ The pleading cycles that the Commission proposes for addressing

¹³ Frontier's suggestions herein depend entirely upon the Commission's decisions (a) to interpret the "deemed lawful" language as a presumption, rather than a finding of lawfulness (*see supra* at 2-3); (b) to adopt procedures that revolve complaints expeditiously (*see infra* at 6); and (c) to sanction exchange carriers that abuse the streamlined filing procedures (*see infra* at 7).

pre-effectiveness review¹⁴ -- even combined with electronic filing¹⁵ -- simply will not work. The compressed time frames do not -- and indeed, cannot -- provide either the Commission or the parties the time necessary to analyze or act upon streamlined filings. The only recourse is for the Commission to rely principally upon post-effectiveness review with the possibility of damages and sanctions looming large.

Fifth, the Commission should establish a policy that it will sanction exchange carriers that abuse the streamlined tariff filing process. For price-cap-regulated exchange carriers, for example, the Commission should establish a conclusive presumption that out-of-band or above-cap filings that are ultimately rejected will be met with substantial monetary forfeitures. The amount of the forfeiture should depend solely on the gravity of the offense. The Commission should deal with other abuses accordingly.

¹⁴ Notice, ¶¶ 27-28.

¹⁵ *Id.*, ¶¶ 21-22.

Frontier agrees with the Commission's proposal to adopt an electronic filing system. Electronic filing will enable parties to have access to tariff filings on a more timely basis than is currently possible. The Commission should attempt to have its electronic filing system operational prior to the time that the Act's streamlined tariff filing requirements become effective.

In addition, the Commission should establish day-certain filing windows for streamlined tariff filings (e.g., tariffs subject to streamlined processing may only be filed on Wednesdays) and require exchange carrier to file brief synopses that set forth the essential terms of such filings. Adoption of these procedures will provide affected parties with a greater ability to respond to streamlined filings on a timely basis.

Sixth, the Commission must adopt efficient mechanisms that ensure that the objections to streamlined tariff filings are disposed of within the 1996 Act's five-month deadline. Frontier suggests that the Commission adopt a bifurcated procedure. The first phase would consist of objections akin to petitions to reject or suspend with petitions due twenty-five days after the filing of the affected tariff, oppositions due fourteen days thereafter and replies due after an additional ten days. The Commission should decide the matter on the pleadings -- either rejecting the transmittal, or subjecting it to further investigation, if so warranted. The second phase -- to be concluded within one year of the tariff filing -- would result in an award of reparations or damages, if required.

The 1996 Act permits exchange carriers to file certain types of tariff on streamlined notice and the Commission, obviously, must be faithful to the will of Congress. The proposals that Frontier suggests would permit the Commission to do so while, at the same time, retaining the ability for the Commission to protect the legitimate interests of largely-captive interstate access customers.

For the foregoing reasons, the Commission should act upon the proposals contained in the Notice in the manner suggested herein.

Respectfully submitted,



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Corporation

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